

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Insolvency) No. 373 of 2025

[Arising out of Order dated 21.01.2025 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench Court-III in IA No.712/2022 in CP No.1222/2019]

IN THE MATTER OF:

**Fabtech Projects and Engineers Pvt. Ltd.
(Formerly Fabtech Projects and Engineers Ltd.)**

...Appellant

Versus

Hindustan Petroleum Corporation Ltd.

...Respondent

Present:

For Appellant: Mr. Chaitanya, Advocate.

**For Respondents: Mr. T. Sundar Ramanathan, Ms. Sukanya
Vishwanathan, Mr. Krishan Singhal, Advocates.**

**J U D G M E N T
(23rd April, 2025)**

Ashok Bhushan, J.

This Appeal by Successful Resolution Applicant has been filed challenging the order dated 21.01.2025 passed by the Adjudicating Authority (National Company Law Tribunal) Mumbai Bench, Court-III rejecting IA No.712 of 2022 filed by the Appellant.

2. Brief facts necessary to be noticed for deciding the appeal are:-

2.1. Hindustan Petroleum Corporation Limited had floated a tender for construction of 3 x 500 MT capacity mounded storage vessels at Purnea LPG Plant and had issued Purchase Orders on special terms and conditions of the Contract. Various Purchase Orders were issued by Hindustan Petroleum Corporation Limited to the Corporate Debtor- 'Fabtech Projects and Engineers Ltd.' between 31.07.2018 to 09.07.2019 for construction of mounded storage vessels. On Section 7 application filed by the Bank of Maharashtra, Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor commenced on 24.09.2019. In the CIRP of the Corporate Debtor, a Resolution Plan submitted by Manjeet Cotton Private Limited and Parason Machinery (India) Private Limited was approved by the Committee of Creditors (CoC) and thereafter by Adjudicating Authority on 16.11.2021. Resolution Plan contemplated extension for period of 12 months. IA No.712 of 2022 was filed by the Applicant/Appellant praying for various reliefs. The application was resisted by the Hindustan Petroleum Corporation Limited. Adjudicating Authority by the impugned order has rejected the application, aggrieved by which order, this Appeal has been filed.

3. We have heard Counsel for the Appellant as well as Counsel appearing for the Respondent.

4. Counsel for the Appellant in support of the Appeal contends that in pursuance of the approval of the plan on 16.11.2021 which provided 12 months extension for completion of ongoing projects, the Respondent was not entitled to deduct any liquidated damages from the final invoices of the

Corporate Debtor. No claim for liquidated damages was made by the Respondent. The approved Resolution Plan is binding on the Respondent and all other concerned and it cannot act contrary to the Resolution Plan by realising liquidated damages. No claim having been submitted, liquidated damages cannot be illegally retained by the Respondent. Appellant has relied on an order passed by the Adjudicating Authority in IA No.303 of 2022 as well as the order of this Tribunal dated 05.07.2022 in Company Appeal (AT) (Insolvency) No.716 of 2022 which judgment was fully applicable and has been erroneously distinguished by the Adjudicating Authority. It is submitted that the observation of the Adjudicating Authority that Resolution Professional never raised objection is not correct. Resolution Professional has by letter dated 20.11.2019 had requested that no liquidated damages be levied. It is submitted that after approval of the Resolution Plan, all claims stand extinguished. Respondent cannot deduct liquidated damages from final invoices without filing any claim.

5. Counsel for the Respondent refuting the submissions of the Counsel for the Appellant submits that the liquidated damages which was sought to be refunded did not relate to any claim prior to CIRP. The Resolution Professional after Corporate Debtor was put in CIRP approached the Respondent and requested to permit the execution of the project. Resolution Professional agreed to act in terms of the Purchase Order. Resolution Professional, however, failed to complete the work and missed the various milestones and schedules. Show-cause notices were issued by the Hindustan Petroleum Corporation Limited as to why liquidated damages be

not imposed and there being no satisfactory reply, liquidated damages @0.5% of every week of delay subject to a maximum of 5% of the total contract value was deducted in the running bills. After approval of the plan on 16.11.2021 certain liquidated damages were deducted which has already been refunded by the Appellant as has been noticed in the impugned order amounting to Rs.31,67,727.69/-. There was no question of filing any claim by Hindustan Petroleum Corporation Limited since there was no claim prior to CIRP period. There was no claim required to be filed by the Respondent since no amount was due on the Corporate Debtor. Liquidated damages were deducted from bills as per the terms and conditions of the contract which cannot be claimed to be refunded after Successful Resolution Applicant coming to picture after getting the plan approved. The Resolution Plan only extinguishes the claims that were subsisting on the day of Resolution Plan. No claim of Respondent was subsisting on the day of Resolution Plan, hence, there is no question of any extinguishment. Extension of 12 months' time was given for completion of the project, however, which extension did not provide for refund of liquidated damages already deducted. Mere extension of time by itself would not mean that Respondent has not suffered delay in the work but it was merely granting time for completion of the work. Judgment relied by Appellant of this Tribunal in ***“Indian Oil Corporation Ltd. vs. Manjeet Cotton Pvt. Ltd. & Ors.- Comp. App. (AT) (Ins.) No.716 of 2022”*** is distinguishable as the claim of IOCL was admitted by the Resolution Professional and dealt in the

Resolution Plan which is not comparable to the liquidated damages that were already deducted and was not covered by the Resolution Plan.

6. We have considered the submissions of the Counsel for the parties and perused the record.

7. In the present case, the Appellant was Successful Resolution Applicant whose Resolution Plan was approved on 16.11.2021. The Corporate Debtor under the various Purchase Orders issued by Hindustan Petroleum Corporation Limited was carrying out the contract for construction of 3 x 500 MT Capacity Mounded Storage Vessels. Resolution Professional after commencement of the CIRP had approached the Respondent with intent to carry out the contract work on the same terms and conditions. The terms and conditions of the Purchase Order provided for deduction of liquidated damages from the invoices on account of the delay as per the terms and conditions. The materials on record indicate that present is not a case of any claim of the Respondent of prior to CIRP period. In the continuation of the CIRP period, invoices were issued by the Respondent in which liquidated damages were deducted as per the terms and conditions which were part of the running contract. The submission of the Appellant is that Resolution Plan contemplated extension of 12 months' period for completion of the contract. The submission of the Respondent is that 12 months' period was granted for completion i.e. 12 months from 16.11.2021. It is submitted that extension of 12 months' period for completion of the contract does not have any effect on the liquidated

damages which were deducted from the invoices as per the terms and conditions of the Purchase Order. Insofar as liquidated damages which were deducted after 16.11.2021 it has been noticed by the Adjudicating Authority itself that the Respondent has refunded the amount of Rs.31,67,727.69/- which is noted in paragraph 14 of the order, which is as follows:-

“14. As far as the liquidated damages deducted by HPCL is concerned, it is seen that during the pendency-of this matter; the Respondent/HPCL had refunded Rs. 31,67,727.69 being liquidated damages "deducted for the period after 16.11.2021 i.e. the date of approval of resolution plan by this Tribunal.”

8. The reliance on the approved Resolution Plan regarding extinguishment of the claim has no effect on the liquidated damages which were already deducted by Hindustan Petroleum Corporation Limited from the invoices as per the terms and conditions of the Purchase Order. When the Resolution Professional was allowed to carry on the contract work after initiation of the CIRP, the said contract has to be carried out as per the terms and conditions and deduction of the liquidated damages from the invoices being part of the terms and conditions for carrying out the contract that cannot be faulted nor any direction after approval of the Resolution Plan can be issued for refund of such liquidated damages. Extension of 12 months is extension for completion of the work and liquidated damages deducted after 16.11.2021 has already been refunded. We, thus, are of the view that the Adjudicating Authority did not commit any error in rejecting

the application filed by the Appellant. The order passed by the Adjudicating Authority and the Appellate Tribunal in IOCL matter has also been dealt with by the Adjudicating Authority in paragraphs 16 and 17 which are as follows:-

“16. However, we note that the facts in IA/303/2022 are distinguishable for the reason that IOCL had pre-CIRP claims which was admitted by the RP and were duly dealt with in the resolution plan whereas herein, HPCL has no pre-CIRP claims against the corporate Debtor and no claim as such was submitted to the RP. The liquidated damages pertained to the period during the CIRP which was deducted by HPCL, as per the contract between the parties. It is also seen that the order passed in IA/303 is distinguishable on one more aspect. The IOCL, in that case, had issued a letter cautioning initiation of proceedings against the Resolution Applicant to recover its claim against which this Tribunal held that the "said claim has been duly treated in the Resolution Plan and IOCL cannot initiate any proceedings in respect to such claims.”

17. Admittedly, the Respondent herein has no pending claims against the Corporate Debtor and we see that no liability has been fastened upon the Applicant to make any payment towards the liquidated damages. Therefore, the order dated 20.04.2022 in IA/303/2022 has no applicability in the present case.”

9. Judgement of this Tribunal in **“Indian Oil Corporation Ltd.”** (supra) which has been relied by the Appellant where order passed by the

Adjudicating Authority on 20.04.2022 in IA No.303 of 2022 was challenged.

In paragraph 2 of the judgment, this Tribunal made following observations:-

“2. This Appeal has been filed against the order dated 20.04.2022 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Court-III by which the Adjudicating Authority decided the I.A 303 of 2022 filed by the Successful Resolution Applicant ‘Manjeet Cotton Private Limited’. The Application was allowed by passing following order:-

“14. In view of the above, the Bench “Allows” IA 303/2022 with the following directions:-

(i) All claims, liquidated damages, advances etc and interest on advances up to the date of the Resolution Plan approved by the Adjudicating Authority stands extinguished and cannot be agitated by IOCL in future as the said claim has been duly treated by the Resolution Applicant in the Resolution Plan and IOCL cannot initiate any proceedings in respect to such claims.

(ii) The Resolution Plan as approved by the Committee of Creditors (“CoC”) is binding on all the parties and, therefore, the period as provided in the Resolution Plan, i.e., the period for completion of the projects under the existing contract shall stand extended for a period of 12 months from the date of NCLT approval/ final Order for completion of pending work.”

This Tribunal in paragraph 5 has made following observations:-

“5. The order passed by the Adjudicating Authority clearly mentioned that all claims, liquidated damages,

advances etc. and interest on advances up to the date of the Resolution Plan approved by the Adjudicating Authority stands extinguished and cannot be agitated by the Appellant in future. No exception can be taken to the aforesaid direction because the claim was up to the date of the approval of the Resolution Plan. In event, any future obligation arises of the Corporate Debtor/ Successful Resolution Applicant, it is open for the parties to take recourse in accordance with the terms and conditions and the order impugned cannot govern any future events and consequences.”

10. What was held in the above case was that all claims, liquidated damages, advances stands extinguished. The present is a case where it is not the case of the Hindustan Petroleum Corporation Limited that any claim towards liquidated damages is due on the corporate debtor nor any claim prior to CIRP or during the CIRP was filed. The present is a case where Successful Resolution Applicant after approval of the plan was asking for refund of deducted liquidated damages which deduction was made from invoices during the currency of the contract as per the terms and conditions of the contract. Thus, extinguishment of the claims, liquidated damages on account of approval of the plan has no effect on the liquidated damages already deducted as per terms and conditions of the contract. It is true that any claim which was not filed or not part of the Resolution Plan shall stand extinguished on the approval of the Resolution Plan but that does not mean that any liquidated damages deducted during currency of the contract should be allowed to be refunded to the Successful Resolution Applicant.

11. We, thus, do not find any error in the order of the Adjudicating Authority dismissing the Application filed by the Appellant. There is no merit in the Appeal. The Appeal is dismissed.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

**[Arun Baroka]
Member (Technical)**

New Delhi
Anjali